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July 17, 2002

Chief of Records  
Office of Foreign Assets Control  
Department of the Treasury  
1500 Pennsylvania Avenue, NW.  
Washington, DC 20220

Via Facsimile : (202) 622-1657

Attention: Request for Comments

Re: Comments on Federal Register Notice of June 19, 2002 Concerning  
Proposed Rules Governing Availability of Information

Dear Sir/Madam:

We submit these comments from Bryan Cave LLP in response to the proposal published in the Federal Register on June 19, 2002 by the Office of Foreign Assets Control ("OFAC") to begin publishing on a quarterly basis the names of entities that pay civil penalties or enter into informal settlements with OFAC concerning alleged violations of OFAC's sanctions regulations.

We offer the following comments as factors that OFAC may wish to consider in deciding how to proceed with the proposal:

1. If civil penalties paid and informal settlements entered into by companies are to be released publicly, OFAC may find that some companies are less likely than they would otherwise be to reach voluntary settlements, and many companies may choose to adopt a more defensive posture because of the prospect of adverse publicity or misuse of the information by the media. This could result in more protracted enforcement cases and more litigation, which would be expensive for industry and could also tax OFAC's enforcement resources.

2. Some companies that are currently willing to enter into private settlements without contesting liability might also be forced by the new disclosure policy to insist on

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settlement terms under which they would admit no liability. This could add to the difficulty of reaching settlements in some cases.

3. In addition it seems that the new policy could discourage some companies from making voluntary self-disclosures of violations that they otherwise would have been willing to disclose.

4. Under the proposed disclosure rules, OFAC may be reluctant to settle very many cases for modest sums, even if such settlements are warranted by the facts and law, because of the concern that a pattern of this type might be mischaracterized by parties seeking to criticize the US, government or OFAC. The risk of such mischaracterization would be heightened if OFAC did not disclose mitigating factors such as inadvertence of a violation, no prior record of violations, cooperation with investigators, voluntary disclosure or remedial measures undertaken by the company concerned. Thus, the routine disclosure policy might give OFAC an incentive to seek penalties larger than the facts and law warrant in some cases.

5. There is a risk that ongoing disclosure of the patterns of parties and transactions that OFAC has detected and punished could give clues to enemies of the United States about the type of surveillance that the U.S. government has conducted or the parties from whom the U.S. government has obtained intelligence. Thus, there is a risk that the new policy could compromise OFAC's future enforcement efforts.

6. The information OFAC proposes to disclose might also be used to the detriment of US, foreign policy. If, for example, there were a preponderance of cases of inadvertent or negligent violations small in scope, the small penalties reflected by such cases might be misused by enemies of the United States or opponents of U.S. embargoes to argue that U.S. sanctions policy was weak or ineffective or that U.S. enforcement against U.S. companies was lackluster,

7. The proposal to disclose enforcement activity involving US. financial institutions could also implicate the special exception in the Freedom of Information Act ('FOIA') that exempts from disclosure information "related to" the examination of such institutions by agencies responsible for their regulation. 5 U.S.C.A. 552(b)(8) (1996). OFAC and the Treasury Department are such agencies, and thus civil penalty and informal settlement information concerning their examination of such institutions is arguably exempt from FOIA disclosure. Indeed, the new policy may cause OFAC to be drawn into reverse-FOIA litigation aimed at preventing the disclosure of information concerning settlements with banks or other parties.

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It seems to us that it would be appropriate to take account of the above issues in fashioning OFAC's policy concerning the proposed disclosure of civil penalty and settlement information. We appreciate the opportunity to comment on the current proposal and hope that our comments will be of assistance to OFAC in determining how best to proceed.

Yours sincerely,

Bryan Cave LLP

A handwritten signature in black ink, appearing to read "Curt M. Dombek", written over the typed name.

by Curt M. Dombek